

1 RICHARD A. SCHONFELD, ESQ.  
2 Nevada Bar No. 6815  
3 CHESNOFF & SCHONFELD  
4 520 South Fourth Street  
5 Las Vegas, Nevada 89101  
6 (702) 384-5563

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

9 UNITED STATES OF AMERICA, )

10 Plaintiff, )

11 v. )

12 RONALD KIRSH, )

13 Defendant. )

2:13-CR-00348-JAD-PAL

RONALD KIRSH'S SENTENCING  
MEMORANDUM

14 COMES NOW the Defendant, RONALD KIRSH, by and through the undersigned attorney  
15 of record, Richard A. Schonfeld, Esq., and hereby submits to this Honorable Court his Sentencing  
16 Memorandum. Defendant Kirsh is respectfully requesting that this Honorable Court impose a  
17 sentence of sixty months with a five years supervised release term to follow.  
18

19 This motion is based upon the instant motion, the attached statement of facts and  
20 memorandum of points and authorities in support of this motion, the records and files in this  
21

22  
23 ///

1 action, and any and all other matters that may be presented prior to or at the time of the hearing.

2 DATED this 3<sup>rd</sup> day of December, 2013.

3  
4 RESPECTFULLY SUBMITTED:

5  
6 By: 

7 Richard A. Schonfeld  
8 Attorney for Defendant  
9 Ronald Kirsh  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4  
5 **1. STATEMENT OF THE FACTS:**

6 Mr. Kirsh plead guilty in this case pre-indictment. He has accepted responsibility for his  
7 conduct, expressed remorse for his conduct, and has undergone extensive counseling since the time  
8 of the offense.

9  
10 **2. MR. KIRSH'S BACKGROUND:**

11 Mr. Kirsh has absolutely no prior criminal history and has historically been a community  
12 oriented hard working individual. Attached hereto are the following documents that evidence Mr.  
13 Kirsh's otherwise exemplary background:

- 14 1. Curriculum Vitae of Ronald Kirsh describing that Mr. Kirsh has been in the media business  
15 since 1990, that he teaches at the college level related to principles in advertising, and that he  
16 is a graduate of the American University in Washington D.C. Mr. Kirsh is 52 years old, has  
17 been married for 29 years, and has resided in Nevada for 26 years. Mr. Kirsh has no prior  
18 criminal history. In addition to the above stated information, the C.V. reflects that Mr. Kirsh  
19 has contributed to the community (without compensation) as a Board member and/or  
20 executive of the Las Vegas-Clark County Library District, the Las Vegas Summerlin Rotary  
21 Club, the Las Vegas Women in Communication foundation, the Jewish Federation of Las  
22 Vegas, the Jewish Family Services Agency, and the Las Vegas Advertising  
23 Federation. Finally, the C.V. reflects the additional volunteer work Mr. Kirsh has engaged in  
24 for the Las Vegas community;
- 25 2. Copy of the Senatorial Recognition of Nevada Broadcaster's Hall of Fame Induction by  
26 Senator Richard Bryan;
- 27 3. Senatorial Recognition of Nevada Broadcaster's Hall of Fame Induction by Senator Harry  
28 Reid;
4. Nevada Broadcaster's Hall of Fame Award;
5. US Local Business Association's Recognition of Best of Las Vegas 2008;
6. Recognition of being a Guest Speaker at a communication seminar at CSN;

1 7. Recognition of being Sergeant at Arms for the Las Vegas Northwest Rotary Club;

2 8. Recognition of Mr. Kirsh's years as a Board Member & President of the Jewish Family  
3 Service Agency;

4  
5 **4. COMMUNITY SUPPORT:**

6 Mr. Kirsh has tremendous family and community support from people that are aware of this  
7 offense and recognize that Mr. Kirsh has an otherwise exemplary background:

- 8 ● Rabbi Felipe Goodman advises that he has known the Kirsh family for sixteen years and has  
9 shared both joyous occasions as well as difficult moments with them. He further states that  
10 notwithstanding Ron's faults, he knows Ron to be a charitable and loving person. "Ron  
11 never declined a request to help and offered his help without being asked" is the description  
12 that Rabbi Goodman gave regarding Ron's community oriented outlook. Rabbi Goodman  
13 further outlined that Ron has given his time, energy and resources unselfishly and with a true  
14 desire to make the world a better place. See Exhibit 9;
- 15 ● Dr. Marlene Schwartz writes that she has known Ron Kirsh for 30 years. Dr. Schwartz is  
16 well aware of the arrest, charges, and guilty plea that has been entered by Ron. Dr.  
17 Schwartz states that Ron is a proud and supportive parent, and active and charitable  
18 member of the community, and a welcoming man. Dr. Schwartz's letter further describes  
19 the charitable work that Ron has engaged in as a result of his desire to help the community.  
20 See Exhibit 10;
- 21 ● Eli and Karen Schwartz write that they have known Ron since 1985 and are close friends.  
22 They recognize Ron as a generous person, supportive husband, and dedicated father. They  
23 understand the charges against Ron and the guilty plea that he has entered into. They request  
24 that the Court "consider Ron not only for the action before the Court, but for all his actions in  
25  
26  
27  
28

1 his life that warrant merit, as well.” See Exhibit 11;

- 2 ● Cliff W. Marcek, Esq., writes that he has known Ron for 15 years as a result of their  
3 membership in the Summerlin Rotary Club. He recognizes that Ron has been an active  
4 member in the Rotary Club, faithfully attended meetings, and was the emcee at many of their  
5 fund raising events. See Exhibit 12;
- 6 ● Janie Root writes that Ron Kirsh is a doting father, loving husband, and a personable man.  
7 Ms. Root knows Ron through his business and as a result of his community council work;  
8 See Exhibit 13;
- 9 ● Robert Murdock, Esq., writes that he is friends with Ron Kirsh and has known him for many  
10 years. Mr. Murdock outlines that Ron was a mainstay within the Jewish charities in Las  
11 Vegas and that his efforts at the Jewish Family Services Agency and Jewish Federation  
12 “resulted in the hungry being fed and the cold being clothed.” Mr. Murdock concludes his  
13 letter by stating “Ron is my friend who has lost his way. I am hoping Your Honor can see her  
14 way to helping Ron instead of simply punishing. I urge the court to give Ron as much  
15 leniency as the plea agreement allows.” See Exhibit 14.

16  
17  
18  
19 **5. COUNSELING:**

20 Immediately after Ron’s arrest in this case he sought a psycho-sexual evaluation from John  
21 Pacult, LCSW. (The evaluation will be submitted separately with a Motion to Seal). At that time,  
22 based on preliminary information Mr. Kirsh was assessed as a low risk to re-offend (which is the  
23 best possible result that can be achieved in such an evaluation). Mr. Kirsh then attended weekly  
24 sessions with Mr. Pacult, with the exception of the five weeks where Mr. Kirsh was undergoing in-  
25 patient treatment at the Meadows.  
26

27 Mr. Pacult then re-evaluated Mr. Kirsh on November 27, 2013, a date after Mr. Kirsh had  
28

1 entered his guilty plea and accepted responsibility for his conduct in this case. After full evaluation,  
2 Mr. Pacult again concluded that Mr. Kirsh is a low risk to re-offend. The report notes that Mr. Kirsh  
3 has undergone weekly sessions with Mr. Pacult, a five week program at the Meadows, read  
4 numerous books related to the underlying issues in this case, and attends Sex Addicts Anonymous  
5 daily.  
6

7 Mr. Pacult's Curriculum Vitae is attached hereto as Exhibit 15. That CV reflects that Mr.  
8 Pacult has performed approximately 4,500 psychosexual evaluations and has contracts with the  
9 Nevada Department of Parole and Probation to perform evaluations on their behalf.  
10

11 Mr. Kirsh's letter outlining that he was discharged from the Meadows Program, with Staff  
12 Approval, is also submitted to the Court with Mr. Kirsh's Motion to Seal. Attached hereto is a  
13 Program Overview outlining the intensity of the counseling program that Mr. Kirsh successfully  
14 completed. See Exhibit 16.  
15

16 **6. SENTENCING OPTIONS:**

17 **18 U.S.C. §3553 FACTORS:**

18 The Ninth Circuit Court of Appeals outlined the procedure for sentencing a Defendant post  
19 *Booker*, in *United States v. Carty*, 520 F.3d 984 (9<sup>th</sup> Cir. 2008). Therein, the Court recognized:  
20

21 The basic framework is now settled for the district courts' task, and ours on appeal,  
22 under *Booker* remedial regime in which the Guidelines are no longer mandatory but  
23 are only advisory. *Rita*, *Gall*, and *Kimbrough* supersede how we, and the courts in this  
24 circuit, have approached the sentencing process in the past. Thus, in light of what  
25 *Rita*, *Gall*, and *Kimbrough* have to say:

- 26 • The overarching statutory charge for a district court is to "impose a sentence  
27 sufficient, but not greater than necessary" to reflect the seriousness of the offense,  
28 promote respect for the law, and provide just punishment; to afford adequate  
deterrence; to protect the public; and to provide the defendant with needed  
educational or vocational training, medical care, or other correctional treatment. 18  
U.S.C. § 3553(a) and (a)(2).

1 • All sentencing proceedings are to begin by determining the applicable Guidelines  
2 range. The range must be calculated correctly. In this sense, the Guidelines are “the  
3 ‘starting point and the initial benchmark,’ ” *Kimbrough*, 128 S.Ct. at 574 (quoting  
4 *Gall*, 128 S.Ct. at 596), and are to be kept in mind throughout the process, *Gall*, 128  
5 S.Ct. at 596-97 n. 6.

6 • The parties must be given a chance to argue for a sentence they believe is  
7 appropriate.

8 • The district court should then consider the § 3553(a) factors to decide if they support  
9 the sentence suggested by the parties, i.e., it should consider the nature and  
10 circumstances of the offense and the history and characteristics of the defendant; the  
11 need for the sentence imposed; the kinds of sentences available; the kinds of sentence  
12 and the sentencing range established in the Guidelines; any pertinent policy statement  
13 issued by the Sentencing Commission; the need to avoid unwarranted sentence  
14 disparities among defendants with similar records who have been found guilty of  
15 similar conduct; and the need to provide restitution to any victims. 18 U.S.C. §  
16 3553(a)(1)-(7); *Gall*, 128 S.Ct. at 596-97 n. 6.

17 The Plea Agreement in this case contemplates a sentencing range of 60 to 72 months. Mr.  
18 Kirsh is respectfully requesting a sentence of 60 months.

19 Mr. Kirsh has been on Pretrial Supervision with GPS Monitoring and has strictly abided by  
20 all conditions of his release. Mr. Kirsh immediately sought and obtained counseling after the  
21 instant offense, obtained a psychosexual evaluation with favorable results, and completed a five  
22 week in-patient addiction program. Mr. Kirsh continues with the aftercare and the twelve step  
23 program.

24 It is clear that Mr. Kirsh, who has an otherwise exemplary background, recognized as a  
25 result of the instant offense that he had a problem and he has gone above and beyond in seeking  
26 treatment for that problem. Mr. Kirsh accepted responsibility for his conduct early on in the  
27 proceedings, which further demonstrates his desire to correct the issues that led to the instant  
28 offense.

1 Even when the USSG Guidelines were binding (pre-Booker) Courts were permitted to take  
2 into consideration the Aberrant nature of the Defendant's conduct and the Defendant's post  
3 offense rehabilitation. In *United States v. Working*, 287 F.3d 801, 805 (C.A. 9, 2002), the  
4 Ninth Circuit reviewed a District Court's downward departure based on Aberrant conduct. The  
5 Court found that it was appropriate for a District Court to depart based upon the following  
6 factors: 1) The isolated nature of the offense, 2) the shock expressed by the Defendant's  
7 friends, 3) lack of prior criminal record, 4) outside pressures, and 5) counseling since the  
8 offense.  
9

10  
11 In the instant case, Mr. Kirsh has no convictions, he has a tremendous work history, he has  
12 tremendous family and community support, and he has done everything humanly possible to  
13 get treatment related to the conduct in this case. Clearly, this offense was aberrant and this  
14 Honorable Court can be satisfied that Mr. Kirsh is doing everything possible to ensure that it  
15 will never happen again.  
16

17 Every circuit which has addressed the issue has held that post-offense conduct and post-  
18 conviction rehabilitation can form the basis for a reduced sentence. *United States v. Green*,  
19 152 F.3d 1202, 1207 (9<sup>th</sup> Cir. 1998); *United States v. Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir.  
20 1998); *United States v. Kapitzke*, 130 F.3d 820, 823 (8<sup>th</sup> Cir. 1997); *United States v. Core*, 125  
21 F.3d 74, 77 (2<sup>nd</sup> Cir. 1997); *United States v. Sally*, 116 F.3d 7680 (3<sup>rd</sup> Cir. 1997); *United States*  
22 *v. Brock*, 108 F.3d 31, 35 (4<sup>th</sup> Cir. 1997). The Tenth Circuit joined the other circuits in holding  
23 that post-offense and post-conviction conduct and rehabilitation is a proper basis for downward  
24 departure. *United States v. Jones*, 158 F.3d 492, 502-503 (10<sup>th</sup> Cir. 1998); *United States v.*  
25 *Whitaker*, 152 F.3d 1238, 1231 (10<sup>th</sup> Cir. 1998). In *Jones*, in particular, the court found that the  
26 district court could properly depart downward from the Sentencing Guidelines based upon the  
27  
28



1 "improvement in his (the defendant's) post -offense conduct."

2 In the instant case, as demonstrated above, aside from the instant offense Mr. Kirsh has  
3 been a productive member of our society and this offense was aberrant. Mr. Kirsh has further  
4 demonstrated since the time of this offense that he can abide by conditions of pretrial release,  
5 can attend to his family responsibilities, and is beyond willing to continue with treatment.

7 **CONCLUSION:**

8 In light of the foregoing, the tremendous community support and letters of good character,  
9 the aberrant nature of Mr. Kirsh's offense, and the treatment that Mr. Kirsh has completed, it is  
10 respectfully requested that Mr. Kirsh be sentenced to a term of sixty months with Supervised  
11 Release of five years.

13 DATED this 3<sup>rd</sup> day of December, 2013.

14 RESPECTFULLY SUBMITTED:

15  
16 By: 

17 RICHARD A. SCHONFELD  
18 Attorney for Defendant  
19 RONALD KIRSH  
20  
21  
22  
23  
24  
25  
26  
27  
28